THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No.445 of 2001
(Old No. 1243/1991)

Smt. Hira Devi & others

Vs

Executive Engineer, Irrigation

& another.

Approved for reporting.

_____

~~**Not approved for reporting**~~

Date of decision 04.08.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 445 of 23001
Old No.1243 of 1991

Smt. Hira Devi & others. …….. Appellants

Versus

Executive Engineer, Irrigation & another ……. Respondents

Mr. Rajendra Dobhal, learned counsel for the appellant.
Learned Standing Counsel for the State.

Dated: 4 August, 2004

Hon'ble Rajesh Tandon, J.

This present appeal has been preferred against the judgment and order dated 26.4.1991 passed by the Commissioner, Workmen's Compensation, Pithoragarh, whereby the claim petition of the appellants bearing No.9 of 1986, has been rejected.

Brief facts of the case are that the claimants have filed the claim petition on account of death of Late Dharam Singh, who was employed in the Irrigation Department. The case of the claimants is that on 22.1.1985, Dhaam Singh was working in Rantoli Nahar along with other labourers and at about 9:00 am., one big stone fell down as a result of which, he received injuries and in Dharchula Hospital, he died at about 2:30 p.m. The appellants have stated that Dharam Singh was between 15 to 28 years at the time of his death and was earning Rs. 9.50/- per day plus others emoluments and was getting a sum of Rs. 14.50/- in total. Therefore, his monthly income was Rs. 405/-. The appellants have claimed a compensation to the extant of Rs. 34,310 as well as Rs. 17,155/- as penalty.

A reply was submitted by the respondents and it was denied that the deceased was in the employment of the Department. On behalf of the appellants, PW1 Hira Devi and PW2 Maan Singh were examined. On the basis of the evidence on record, the Workmen Compensation Commissioner has recorded a finding that there is nothing on record to suggest that the deceased was employed by t he

department. The Workmen Compensation Commissioner, therefore, has rejected the claim of the appellants.

Learned counsel for the appellants has proved from the documentary evidence i.e. Ex. D1, D2, D3 and D4 that the deceased was under the employment of the respondent- Department on the date of the said accident. He was working under the supervision of Shri Joshi Junior Engineer in the Irrigation Department. The appellants have also tried to establish that the deceased was working in Rashtriya Gramin Rojgar Yojna. A Judicial notice can be taken of the fact that the project employees are not being issued any permanent appointment letter, but they remain in the project till it continues. The Workmen Compensation Commissioner has not looked the documents and muster rolls etc.

I, therefore, find that the judgment and order passed by the Workmen Compensation Commissioner is completely violative of human rights as the death of the laborer having been occurred on account of failing of the stone and has resulted in the injuries while the deceased was working in the project of the respondent-Department.

I, therefore, allow the appeal and remand the matter of the Workmen Compensation Commissioner to decide it afresh after examining all the records within a period of three months from the date of filing of the certified copy of this order. If the authority concerned is satisfied from the documents on records i.e. muter roll and the other documents shown in the grounds of appeal as Ex. D1, D2, D3, & D4, the calculated amount shall be released in favour of the claimants forthwith.

(Rajesh Tandon, J.)

Dt. 4 August, 2004
G